



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 31, 1995

Mr. Curtis Tunnel  
Executive Director  
Texas Historical Commission  
P.O. Box 12276  
Austin, Texas 78711-2276

OR95-044

Dear Mr. Tunnel:

You previously asked whether certain information held by the Texas Historical Commission (the "commission") is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. You asserted in your letter of September 12, 1994, that information requested by Ms. Noemi Eling is excepted from required public disclosure under sections 552.101 - 552.123 of the Government Code. Your request was assigned ID# 29034.

Since the time of your request for an open records decision, Dr. James E. Bruseth, Deputy State Historic Preservation Officer, in a letter received by this office on October 12, 1994, indicated that the commission was withdrawing its request for a ruling in this matter because it believed that an agreement with Ms. Eling regarding the release of the requested information was likely. Additionally, on October 28, 1994, Dr. Bruseth informed a member of our staff that the commission had actually requested a clarification from Ms. Eling regarding her open records request and that upon receipt of such clarification the commission would either release the requested records or submit to this office a copy of the records at issue with an explanation as to the applicability of specific exceptions to required disclosure. Finally, in a letter dated November 8, 1994, Ms. Eling informed this office that she was in fact still interested in obtaining information from the commission. To date, this office has received no confirmation that the information at issue has been released to Ms. Eling.

The Open Records Act imposes a duty on governmental bodies seeking an open records decision pursuant to section 552.301 to submit that request to the attorney general within 10 days after the governmental body's receipt of the request for information. The time limitation found in section 552.301 is an express legislative recognition of the importance of having public information produced in a timely fashion. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). When a request for an open records decision is not made within the time period prescribed by section 552.301,

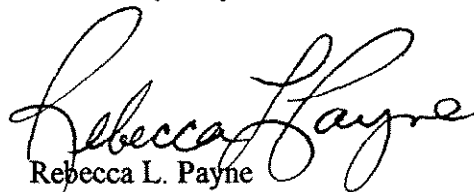
the requested information is presumed to be public. *See* Gov't Code § 552.302. This presumption of openness can only be overcome by a compelling demonstration that the information should not be made public. *See, e.g.,* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests).

We realize that the short time frame prescribed by section 552.301 may occasionally impose a substantial burden on governmental bodies seeking to comply with the act. Accordingly, when we receive an otherwise timely request for an open records decision that lacks some information necessary for us to make a determination, it has been our policy to give the governmental body an opportunity to complete the request. On October 4, 1994, we asked you to submit copies of the records at issue, your arguments for withholding the documents, and a copy of the request for information. At that time we also requested that you notify any party that may have a privacy interest in the subject matter. As noted above, we have not received any of the requested information.

The Open Records Act places on the custodian of public records the burden of establishing that records are excepted from public disclosure. Attorney General Opinion H-436 (1974). Your request for an open records decision remains incomplete. Without the information requested from you, this office is unable to evaluate the exceptions you raised. Because you have not submitted to this office any of the information we previously requested, we assume that all of the information requested by Ms. Eling has been released to her. Otherwise, we find that you have not met your burden under sections 552.301 - .303 of the act and that the information is now presumed to be public.

In the absence of a demonstration that the information is confidential by law or that other compelling reasons exist as to why the information should not be made public, you must release the information at this time. *See also* Gov't Code § 552.352 (the distribution of confidential information is a criminal offense). If you have any questions regarding this matter, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Rebecca L. Payne".

Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/RWP/sbm

Ref.: ID# 29034

cc: Ms. Noemi Glavan Eling  
President  
Galvan Eling Associates, Inc.  
3200 Breeze Terrace  
Austin, Texas 78722